

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

|                           |   |                             |
|---------------------------|---|-----------------------------|
| PAUL RICHARDSON,          | ) | Case No. C 15-6000 PSG (PR) |
|                           | ) |                             |
| Plaintiff,                | ) | <b>ORDER OF DISMISSAL</b>   |
|                           | ) |                             |
| v.                        | ) |                             |
|                           | ) |                             |
| BOARD OF PAROLE HEARINGS, | ) |                             |
|                           | ) |                             |
| Defendant.                | ) |                             |
| _____                     | ) |                             |

Paul Richardson, a California prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983.<sup>1</sup> For the reasons stated below, the court dismisses the complaint for failure to state a claim for relief.

# I. DISCUSSION

## A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.<sup>2</sup> In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous,

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<sup>1</sup> Richardson has consented to magistrate judge jurisdiction. *See* Docket No. 4.

<sup>2</sup> *See* 28 U.S.C. § 1915A(a).

malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief.<sup>3</sup> *Pro se* pleadings must, however, be liberally construed.<sup>4</sup>

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law.<sup>5</sup>

B. Richardson's Claim

On November 14, 2014, a three-judge court in *Coleman v. Brown*, No. 90-cv-520-KJM DAD (PC) (E.D. Cal.), and *Plata v. Brown*, No. C01-1351 TEH (N.D. Cal.), issued an order directing the State to "implement new parole procedures for non-violent second-strikers by January 1, 2015," by creating "a new parole determination process through which non-violent second-strikers will be eligible for parole consideration by the Board of Parole Hearings once they have served 50% of their sentence."<sup>6</sup> As a non-violent second striker who had served at least 50% of his sentence, Richardson was eligible for parole consideration under this *Coleman/Plata* order. On September 10, 2015, the Board of Parole Hearings considered and denied Richardson parole.<sup>7</sup>

Richardson's federal complaint asks this court to compel the Board of Parole Hearings to reassess its denial of Richardson's eligibility for parole, and grant him early release.<sup>8</sup> However, Richardson's complaint fails to state a cognizable claim for relief. First, Richardson does not

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<sup>3</sup> See 28 U.S.C. § 1915A(b)(1), (2).

<sup>4</sup> See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

<sup>5</sup> See *West v. Atkins*, 487 U.S. 42, 48 (1988).

<sup>6</sup> *Plata v. Brown*, No. C01-1351 TEH (N.D. Cal.), Docket No. 2823 at 2.

<sup>7</sup> See Docket No. 1 at 2; Docket No. 1-1 at 2, 4; Docket No. 1-2 at 2.

<sup>8</sup> See Docket No. 1-2 at 18.

1 assert that the denial of parole violated any constitutional right.<sup>9</sup> Second, because Richardson is  
 2 seeking immediate release, rather than an earlier eligibility review or parole hearing,  
 3 Richardson's claim must be brought in habeas rather than in civil rights.<sup>10</sup> "[H]abeas corpus is  
 4 the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement  
 5 and seeks immediate or speedier release, even though such a claim may come within the literal  
 6 terms of § 1983."<sup>11</sup>

## 7 II. CONCLUSION

8 This action is DISMISSED for failure to state a claim.

9 IT IS SO ORDERED.

10 DATED: 3/16/2016

  
 PAUL S. GREWAL  
 United States Magistrate Judge

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25 <sup>9</sup> See *West*, 487 U.S. at 48.

26 <sup>10</sup> See *Anyanwutaku v. Moore*, 151 F.3d 1053, 1055-56 (D.C. Cir. 1998).

27 <sup>11</sup> *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 489  
 28 (1973)); see *Skinner v. Switzer*, 131 S. Ct. 1289, 1293 (2011).